

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,) No. 2012 CR 872
Plaintiff,) May 21, 2014
v.) 10:30 a.m.
CHERRON PHILLIPS,)
Defendant.)

TRANSCRIPT OF PROCEEDINGS - CONFERENCE
BEFORE THE HON. MICHAEL REAGAN

APPEARANCES:

On behalf of Plaintiff: MR. NATHAN STUMP
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On behalf of Defendant: MS. LAUREN W. SOLOMON
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1 THE CLERK: 12 CR 872, USA versus Cherron Marie
2 Phillips.

3 THE COURT: Mr. Stump?

10:28:34

4 MR. STUMP: Yes. Good morning, Your Honor. Nathan
5 Stump on behalf of the United States.

6 THE COURT: Miss Solomon.

7 MS. SOLOMON: Good morning, Judge. Lauren Weil
8 Solomon on behalf of Miss Phillips, who is present in court.

9 THE COURT: Good morning, all.

10:28:44

10 I'm Judge Michael Reagan from the Southern District of
11 Illinois, and I've been assigned this case by Chief Judge Diane
12 Wood of the Seventh Circuit Court of Appeals. Judge Mihm had a
13 physical issue this morning that's going to resolve itself, but
14 not in time for him to try this case on June 16th when it's
15 currently set, and I intend to honor that particular date.

10:29:03

16 So what I'd like to do today is go over the final
17 pretrial conference with you and then conclude with the jury
18 instruction conference so that we can begin with the evidence
19 as soon as possible if we pick a jury on Monday, the 16th.

10:29:20

20 So let me kind of start by just some general
21 background information. Will either side request witnesses to
22 be excluded?

23 MR. STUMP: Your Honor, I believe we'll go ahead and
24 invoke the rule on that.

10:29:33

25 THE COURT: Okay.

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1 MR. STUMP: I think it will probably only prevent my
2 own witnesses from being in the courtroom, but that's just our
3 typical policy.

4 THE COURT: Miss Solomon?

10:29:41

5 MS. SOLOMON: I would agree with that. I would
6 request.

10:29:53

7 THE COURT: All right. So witnesses will be excluded.
8 If you see anybody in the back of the courtroom who should not
9 be here because of the exclusion order, please give us a high
10 sign and we'll ask them to leave. I don't know if this case is
11 going to draw a lot of people or not. This is the first case
12 I've tried in Chicago. I don't know if people come and go just
13 to watch proceedings. They do in my courtroom, and I can't ask
14 everybody if they are involved in this case or not. I do have
15 a sign in the back of my courtroom telling them not to come in
16 if they are a witness. So just help me out with that. If you
17 see somebody who is a witness, we'll make sure that they do
18 leave before there is any testimony.

10:30:08

10:30:21

19 MR. STUMP: Your Honor, I can just preview for the
20 Court. I do think there will be, maybe not a full gallery, but
21 there will be some spectators just based on what we saw when we
22 got ready for trial last year and also just the general
23 interest that's been shown in the community for this case.

24 THE COURT: Okay. Miss Phillips?

10:30:36

25 THE DEFENDANT: Judge, I'd like to -- again, my name

1 is River Bey for the record, and I'd like to address the Court
2 if I may, please.

10:30:52

3 THE COURT: Okay, in a very limited fashion. I know
4 the whole history of the case, and I know that Judge Mihm
5 revoked your pro se status. So you are represented by counsel,
6 and I understand reluctantly, and I know that you filed some
7 documents yesterday.

8 THE DEFENDANT: Yes.

10:31:05

9 THE COURT: That's a repeat of what Judge Mihm has
10 already ruled on, and so what he has done is what we call the
11 law of the case, so I'm not going to reconsider the
12 jurisdiction issues. If there's a statement you'd like to make
13 at the very beginning, go ahead.

10:31:20

14 THE DEFENDANT: Yes, I would. These issues are not
15 quite the same, first of all. Second, I do believe that they
16 need to be heard on the record because they are issues that are
17 still of concern of mine.

18 THE COURT: Okay.

10:31:32

19 THE DEFENDANT: And the proceedings can't go forward
20 unless these issues are addressed.

10:31:47

21 THE COURT: Okay. Here's how we have to do that, Miss
22 Phillips. Since you are represented by counsel, I can't let
23 you speak on your behalf. But if she would file any of these
24 documents in her name on your behalf, I will certainly consider
25 that. But I can't permit what's called hybrid representation

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1 where you represent yourself and she represents you. It has to
2 be one or the other, and the law of the case is that you're not
3 going to be permitted to represent yourself.

4 THE DEFENDANT: Over my objection?

10:32:00

5 THE COURT: Absolutely. And I know the history of the
6 case, and I know that's over your objection.

7 THE DEFENDANT: Okay. Well, then just for the record,
8 I do not consent to these proceedings.

9 THE COURT: Okay, and I understand.

10:32:12

10 So we'll exclude witnesses.

11 The next thing I'll need the first day of trial, if
12 counsel would get together and come up with an agreed statement
13 of the case for me to read to the jury. If you can't agree,
14 each side just bring your own version, and I'll probably give a
15 combination of that. Just something for me to read to the jury
16 so they know what the case is about.

10:32:31

17 I'll need an exhibit list also filed the first day of
18 trial. Just bring it.

19 Gladys, with exhibit lists, do you have a formal form
20 you use here or is it just up to each judge?

10:32:46

21 THE CLERK: Just the Judge.

22 THE COURT: If you want to use our usual form in the
23 Southern District, that's fine. Just give me a list of your
24 exhibits so that I have it in advance, what they are. Serve
25 one on opposing counsel. Approximately how many are we talking

10:33:01

1 about for the government?

2 MR. STUMP: How many exhibits, Your Honor?

3 THE COURT: Right.

4 MR. STUMP: Let's see. I think I know the answer to
10:33:13 5 that.

6 THE COURT: Just a rough number is fine.

7 MR. STUMP: Judge, I've got about 40, about 40
8 exhibits.

9 THE COURT: Okay. Have them premarked, and then give
10:33:30 10 me an exhibit list.

11 Same with the defendant. If you have any exhibits,
12 give us an exhibit list also, and make sure everything is
13 shared so there are no surprises.

14 MS. SOLOMON: All right.

10:33:39 15 THE COURT: In terms of the technology, I don't know
16 what courtroom we are going to be in. We will start on June
17 16th, the defendant will have to be here. And I know, Miss
18 Phillips, you've attended all the hearings, and I appreciate
19 that. And I know the position you're taking in this case. I
10:33:53 20 disagree with it, but I know the position you're taking, and I
21 assure you you have preserved that for the record for the Court
22 of Appeals, okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So we will be assigned a courtroom
10:34:05 25 sometime in the future. That will be on the CM/ECF docket. It

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1 probably will not be this courtroom.

2 In terms of the technology, I don't know which
3 courtroom we are going to have, but I think the government has
4 indicated they don't need a lot of technology, so probably just
5 a document camera.

10:34:19

6 Miss Solomon, do you have any specific needs?

7 MS. SOLOMON: Not at this time.

8 THE COURT: Approximately how many witnesses is the
9 government going to have?

10:34:26

10 MR. STUMP: Approximately 20, Your Honor.

11 THE COURT: Okay. We are going to start each day --
12 the first day we are going to start probably with the jury
13 about 9:30 as opposed to 9:00, and that's because I intend to
14 submit a jury questionnaire to them.

10:34:43

15 Would you hand those out, please, Gladys.

16 This is a form that I've found helpful for you, and so
17 we'll ask the jury to complete this questionnaire before they
18 are sent up here to the courtroom, and that will answer a lot
19 of questions for you.

10:35:05

20 Gladys, would you give this one to Miss Phillips for
21 me.

22 THE CLERK: I have another one here.

23 THE COURT: Sure.

24 THE DEFENDANT: I will be refusing that. Thank you.

10:35:19

25 THE COURT: Do you not want us to give you any

1 documents?

2 THE DEFENDANT: As I said, sir, I have a standing
3 objection to the proceedings.

4 THE COURT: Okay. All right. I just wanted to as a
10:35:27 5 courtesy give you copies of the documents, but we won't do that
6 if you won't accept them.

7 Give me a thumbnail sketch of your case, Mr. Stump.

8 MR. STUMP: Judge, the elements are four. Basically
9 we have to prove that there was a false lien or encumbrance
10:35:48 10 filed against the property of a federal government official, we
11 have to prove that that was done knowingly, that the lien
12 itself was false, and, of course, we have to prove that this
13 was all in retaliation for some act by that official.

14 So what I have is I have 12 counts. Each one of those
10:36:07 15 counts represents a separate victim, and so I'm expecting all
16 12 of those victims to testify. That's where I get the large
17 number of witnesses from. And then those victims will testify
18 that they did not owe Miss Phillips any money, certainly not
19 \$100 million what's listed in the liens, and they will also,
10:36:28 20 there will also be testimony to establish that all of them were
21 involved to some degree in the investigation and/or the
22 prosecution of Miss Phillips' brother, Devon Phillips. So it
23 will be some witnesses who are described in that process and
24 what happened in that prosecution and the roles that various
10:36:48 25 people played.

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1 I also expect to have some expert testimony, Your
2 Honor. I have a fingerprint expert from the FBI named Monte
3 Swank. I noticed him as an expert. We intend to call him
4 towards the end of the trial. He analyzed the liens because
5 they had fingerprints on them, and he'll testify to his
6 conclusion that I think nine out of eleven liens that he
7 examined he was able to determine that the thumbprint, the
8 fingerprint on the lien matched a fingerprint known to belong
9 to the defendant.

10 And then finally, Your Honor, there was a search
11 warrant involved and an arrest made of Miss Phillips. The
12 search warrant was in March of 2012. The arrest was made after
13 she was indicted in this case. I have a few officers who will
14 testify about what they found during the search warrant and the
15 statements that Miss Phillips made both before and after she
16 was arrested about this case.

17 THE COURT: Okay. And then, Miss Solomon, my habit is
18 on cross-examination, I give you great leeway in going beyond
19 the scope unless there's a real good objection as to why we
20 shouldn't. And the reason I do that is so you don't have to
21 bring them back in your case. So I just want you to know that,
22 and that goes both ways. I don't disregard the rule, but I'm
23 very liberal with respect to it unless there's an objection.

24 How about your case, Miss Solomon?

25 MS. SOLOMON: Your Honor, there are a couple of

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1 motions in limine that we'd like to raise.

2 THE COURT: Okay.

3 MS. SOLOMON: The government raised the issue of what
4 was uncovered during the search, and one of the things that was
5 uncovered was a weapon, and we would certainly be moving in
6 limine to exclude that from testimony in this proceeding.

7 MR. STUMP: I'm sorry.

8 THE COURT: We don't need to argue that now. You've
9 got by June 2nd, if you could file your motions in limine.

10 Isn't that what I put? Did I give you an order on that?

11 MR. STUMP: Yes.

12 THE COURT: And you can bring that up, and I gave you
13 a deadline to respond.

14 MR. STUMP: Yes. I'll just say for any motions that
15 she raises today, we'll get together and maybe we can resolve
16 them.

17 MS. SOLOMON: Okay, that would be fine.

18 I also have for the Court today some proposed
19 defendant's jury instructions.

20 THE COURT: Great. When we are done with the final
21 pretrial, what I'd like to do is come down to the table with
22 all of you, and I'll go over the instructions. We'll do the
23 conference today.

24 MS. SOLOMON: Okay. I also have some voir dire issues
25 with regard to publicity --

1 THE COURT: Okay.

2 MS. SOLOMON: -- that has been involved in this case.

3 THE COURT: Great. Okay.

4 MS. SOLOMON: Other than that, at this point, since

10:39:31

5 I've had very limited interactions with Miss Phillips in terms
6 of witnesses or a really finalized defense, I can't tell the
7 Court at this point.

8 THE COURT: Okay. I understand.

9 Miss Phillips, something I want to tell you, though,

10:39:47

10 is there are two absolute rights you have. One is to plead
11 guilty or not guilty to one or more of the counts in the
12 indictment. You've pled not guilty, so you're going to have a
13 trial.

14 At trial you have an absolute right to testify if you
15 want to or to not testify, and you don't have to make that
16 decision now, but no matter what your lawyer or anybody says,
17 if you want to testify, you're going to be permitted to
18 testify. Now, you are going to have to testify according to
19 our rules and on relevant matters, but the decision to testify
20 or not is completely up to you.

10:40:17

21 MS. PHILLIPS: For the record I have not made any
22 pleas in this court; and, secondly, with the jurisdictional
23 issue, I would not be able to testify if that's still the
24 question.

10:40:34

25 THE COURT: And that's going to be up to you

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1 completely, but I want to make sure you understand. We did
2 enter a plea of not guilty for you I assume when you were
3 brought before the magistrate as a matter of course.

10:40:51

4 So motions in limine due June 2nd and I think
5 responses a week later. Whatever that order said, follow that.
6 And also any response you have to document 40, Miss Solomon,
7 which is the government's notice of 404 evidence. We talked
8 about that.

10:41:08

9 MR. STUMP: Your Honor, and I don't mean to step on
10 your toes at all on this. For the 404(b), I just wanted to
11 make sure you knew that before the first trial was supposed to
12 happen, that issue was before Judge Shadur, and Judge Shadur
13 entered an order basically granting the government the ability
14 to present that evidence. And I just raise that just so you
15 know as part of the history of the case that that had happened.

10:41:28

16 THE COURT: Was she represented by counsel at that
17 time?

10:41:41

18 MS. SOLOMON: That was prior to my being in the case,
19 and I certainly have objections to the admitting of that
20 evidence. I will be filing a motion in opposition.

10:41:58

21 THE COURT: Sure. With great respect for Judge Shadur
22 and Judge Mihm, this case is going to go to the appellate court
23 under the name Reagan District Judge, so I will revisit all the
24 rulings including the pro se status if there's a properly filed
25 motion that is compelling and is under oath.

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1 Otherwise, as I indicated, the jurisdictional issue is
2 the law of the case because, frankly, I've been through cases
3 like this before, Miss Phillips. The first one was a fellow
4 named Frederick James when I first came on the bench.

10:42:13 5 Wonderful man, but he thought that since he was a Moore, that
6 the laws of our country didn't apply to him, and so he thought
7 he could conspire to distribute marijuana, which he did, and he
8 was convicted after a trial. He claimed I didn't have
9 jurisdiction, and he's now spent 17 years in the Bureau of
10:42:32 10 Prisons.

11 Two months, three months ago I tried another case, an
12 individual claimed I didn't have jurisdiction over him. His
13 name is Destry Marcott, and he didn't think he should have to
14 pay taxes and in fact filed claims for taxes that he wasn't
10:42:43 15 entitled to. He was convicted after a jury trial. He didn't
16 appear for his sentencing, so I don't know the status of that
17 case.

18 But I understand your position as to the jurisdiction.
19 It's been decided, there is an order on it, so that certainly
10:42:58 20 can go to the Court of Appeals.

21 THE DEFENDANT: If I may?

22 THE COURT: Sure.

23 THE DEFENDANT: My question would be what would be the
24 legislative authority of the Court, what is the legislative
10:43:11 25 authority of the statute cited and the validity of the statute

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1 cited?

2 THE COURT: Sure, and that was vetted by Judge Mihm in
3 his order. He went through the congressional history of it.

10:43:24

4 THE DEFENDANT: And did you also find that there was
5 no federal record, federal registration record pursuant to
6 statute.

7 THE COURT: I haven't looked at that, quite honestly.

8 THE DEFENDANT: Well, that's what my research showed,
9 and that's why there is still a question.

10:43:37

10 THE COURT: Okay. You know, you're really a smart
11 lady, I can tell. You know what? You've got three friends in
12 this world right now. Do you know who they are? Her, the 12
13 of them who are going to sit in that box, and me because I'm
14 going to make sure you get a fair trial. Because do you know

10:43:55

15 what I hate to do? On Fridays I put people in the
16 penitentiary, and I hate it. I absolutely hate it. So I hope
17 you work with your lawyer. When people are found not guilty in
18 my court, I am secretly happy. Do you know why? Because it
19 means the system works. It means the system works. But unless
20 you can work with her, I'm concerned. Okay.

10:44:12

21 As to objections, please make your objection. Make it
22 specific to the extent that you say hearsay. You don't have to
23 say Rule 803(b), whatever, but make sure I understand what it
24 is. If you mean hearsay and the objection should have been
25 lacks firsthand knowledge, I'm not going to conjure up the

10:44:37

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1 correct ruling for you, the correct objection. So make sure
2 you say, you know, objection, lacks firsthand knowledge,
3 objection, hearsay, objection relevancy, and then I'll rule on
4 it. Don't make any speaking objections.

10:44:53

5 Sidebars are disfavored. That doesn't mean we won't
6 have one, but we'll have plenty of time before court, during
7 lunch hour, and after court to cover any objections. And the
8 reason they are disfavored is typically, I don't know about the
9 courtroom we are going to be in, we go to sidebar, we have to
10 turn on white noise which the jurors hate, and then the court
11 reporter has to come over, and all that takes time. And so we
12 ought to be able to handle things without doing them at
13 sidebar. But, again, I'm not saying this is a no-sidebar case,
14 just that they are disfavored.

10:45:27

15 In terms of witnesses, Mr. Stump, if you could have
16 them ready to go in the courtroom, and when we take a break,
17 have them on the witness stand so we don't have to call them
18 back in. That would be helpful.

10:45:42

19 I'm hoping to get this case to the jury Wednesday if
20 we can. Now, I know you've got a lot of witnesses and that,
21 but I want to make sure that we give them plenty of time to
22 deliberate. I've got all the time in the world. We are going
23 to start, our average day will be at 9 o'clock, and we'll start
24 at 9 o'clock on June 16th, but we probably won't have a jury up
25 here until 9:30. We break from noon to 1:00 roughly? Is an

10:46:02

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1 hour long enough for the jurors? So we'll break roughly noon
2 to 1:00 and then go till about 5 o'clock each day.

10:46:23

3 Having said that, if it's a quarter to 5:00 and we've
4 got a witness who is going to take quite a while, we'll just
5 break at quarter to 5:00 rather than break them up. By the
6 same token, if we can finish that witness by 5:15 or so, we'll
7 go ahead and extend over 5:00. Will that work? So that will
8 kind of be our goal.

10:46:40

9 In terms of the protocol, as long as we can hear you,
10 I don't care if you stand, sit, walk around. That's not a
11 problem. I would mention that during voir dire, though, the
12 court reporters have a little difficulty hearing when you're
13 talking to the jurors in the back and your back is to them. So
14 you might want to make sure we can hear you; otherwise, I'll
15 kind of get your attention.

10:46:56

16 And if we have anyone who needs the assisted listening
17 devices, then you'll have to tether yourself to a microphone
18 because they won't be able to hear without that.

10:47:15

19 Okay. In terms of jury selection, we are going to
20 bring in 34 jurors. They will have filled out this
21 questionnaire, so you'll have it. I'm going to ask whoever the
22 courtroom deputy is at that time -- it won't be Gladys. She's
23 riding off in the sunset -- to do a chart for us. So we'll
24 have a chart with 14 boxes in it. Juror No. 1 is the bottom
25 right-hand corner, and you'll have the juror number and their

10:47:35

10:47:54

1 name. We will refer to the jurors by number only. We won't
2 use their name so that we can protect their privacy, because
3 this eventually could all get uploaded to the internet. We'll
4 also have wherever they are seated in the back, I'll ask that
5 we have a chart of that.

10:48:09

6 I'll swear the jurors. I'll go through a rather
7 thorough voir dire on this case and handle everything that I
8 would think either side would want to have handled. But when
9 I'm finished, I'll turn it over to the government for questions
10 to any specific jurors. I just ask that you don't ask
11 questions of each one just to fall in love with them and
12 develop a relationship. Then when the government is done, turn
13 it over to the defense. Usually 30 minutes apiece is adequate
14 because of the depth that I go into on voir dire. I will
15 handle all the hardship questions, though. I've found that
16 inventive and resourceful lawyers can always get somebody to
17 claim a hardship, so I'll take care of that.

10:48:25

10:48:43

18 Once we've asked all the jurors and exhausted all the
19 questions, and if there are questions you want me to ask, Miss
20 Solomon, as part of voir dire that you would not like
21 associated with you, you want me to ask them, I'll be happy to
22 consider those.

10:48:57

23 Once we've done all that questioning, we'll take a
24 break, and I'll do challenges for cause. This is all out of
25 the presence of the jury. I'll ask the government for their

1 challenges for cause one at a time. So let's say the
2 government challenges juror No. 3 because they, they've got a
3 pending felony or something, although they should have been
4 weeded out by the system. I will get the defense position, and
5 I'll rule.

10:49:15

6 After we do all the government's challenges for cause,
7 we'll do the defense challenges for cause, and I'll rule. So
8 at that point in time you know who the potential venire is
9 going to be. And then we'll take about a 20-minute break. You
10 can meet with your respective sides to go over your peremptory
11 challenges.

10:49:28

12 The defense will have ten peremptory challenges, the
13 government will have six, okay? Once you accept a juror,
14 you're stuck with him. There's no backstriking, and you can't
15 carry over any challenges. Let me explain it.

10:49:47

16 We'll start at the bottom right-hand corner juror No.
17 1. Let's say the government accepts and the defense accepts.
18 That juror is on our panel, okay? You cannot later go back and
19 strike them. We get to juror No. 2, we are going to go to the
20 defense, accept or reject. You accept and say the government
21 strikes, they are gone. Then we go back to the government. So
22 we are going to alternate back and forth. Again, it's out of
23 the presence of the jury. I'll help you keep track of exactly
24 where we are and the number of challenges and that kind of
25 thing.

10:50:04

10:50:21

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1 One we've got the first 12 jurors, then all the
2 challenges are gone, and we start over again, okay? So for the
3 original jury of 12 we'll have ten challenges for the defense
4 peremptory, six for the government. When we get to the
5 alternates -- and I like two alternates in this case so we have
6 a total of 14 jurors -- we'll start all over again. The
7 government will go first, then the defense, government,
8 defense, one challenge per side for the alternates.

9 I reserve the right to use what's called the struck
10 method if I need to. I have never had to in 14 years, but if I
11 need to, and that's this situation. We are going to have 34
12 jurors. Let's say for whatever reason we end up with a whole
13 lot of challenges for cause such that if you also exercise all
14 of your peremptories, I don't have enough jurors left. If
15 that's, if I can tell that could occur, and I'll know that by
16 the number of cause challenges I grant, then I might require
17 both of you to give me your challenges in writing at the same
18 time. So I'll get the government's ten, or the government's
19 six, the defendant's ten. What that does is there's often
20 overlap between the two, and then I can get by with less
21 jurors. But, again, I've not needed that.

22 Gladys, will there be other jurors available in the
23 courthouse if we need them?

24 THE CLERK: It's is all dependent if some other judge
25 has a jury.

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1 THE COURT: If somebody else has?

2 THE CLERK: If you want, I could order more jurors.

3 THE COURT: Why don't we go with 36.

4 THE CLERK: Okay.

10:52:01 5 THE COURT: We'll start with that.

6 So then after we've done the peremptory challenges,
7 I'll go over again with you the list to make sure we are on the
8 same page, the first 12 who they are, the next two alternates.
9 Then I'll bring the jury in. Depending on what time it is, we
10 might go -- I'll swear them, and we might go right into
11 openings statements.

12 Any idea how long your opener is?

13 MR. STUMP: I think around 10, 15 minutes.

14 THE COURT: Okay. And, Miss Solomon, if you want to
10:52:33 15 open at that time, that is fine. If you want to reserve for
16 later, that's fine too. I leave that up to you. I don't try
17 your case for you.

18 And then I would say have your first witness available
19 in the morning just in case, doubtful but just in case. And
10:52:46 20 then starting at 1 o'clock we'll start with the witnesses.

21 I will instruct the jurors ahead of time. That's why
22 I like to do instructions now. Obviously there's some
23 instructions that I might have to give them later. For
24 example, anything regarding whether the defendant is going to
10:53:03 25 testify or not we'll reserve on. The credibility of the

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1 witnesses has to be reserved on because it depends on whether
2 she testifies or not or as to whether we have the bracketed
3 material or not. But generally I give them most of the
4 instructions up front. I read them to them on the document
10:53:18 5 camera so they can read along, but I have individual monitors.
6 I don't know if I'll do that here. They'll also get the
7 instructions back in the jury room with them. I'll tell them
8 that I'll instruct them throughout the course of the case also,
9 and at the end they'll get more instructions and that they must
10:53:32 10 consider them as a whole and not singling one out over another.

11 MR. STUMP: Judge, would that be before or after the
12 opening statements?

13 THE COURT: Before openers, first thing.

14 MR. STUMP: And with regard to closing, is it same
10:53:43 15 thing, instructions after closing?

16 THE COURT: No, I'll give them before closing. So
17 you'll, I will actually let you have the unmarked copies if you
18 want to put them on the Elmo. Or if you want to use your
19 copies you can do that, and you don't have to go through the
10:53:57 20 fiction "I expect the Court will instruct you." No, they will
21 have been instructed.

22 I don't limit you an opening statement, the time you
23 take. I do limit you on closing, but I let you choose how much
24 as long as it's reasonable, but then I keep track of the time.
10:54:13 25 Just so you know. That's a ways away.

MICHAEL P. SNYDER, Official Court reporter

1 Any questions about picking the jury?

10:54:36

2 MR. STUMP: Do we have in the courtroom a mic that the
3 jurors will be able to pass around? And is there also some
4 sort of mic like that that the lawyers can use so we are not
5 tied to a standup mic?

6 THE CLERK: I think there is, but I'll check with
7 systems.

10:54:48

8 THE COURT: Okay. It kind of depends on what
9 courtroom we are in, I guess. Typically if you like to walk
10 around, I like you to have the microphone so we can hear you,
11 and I just make sure the jurors talk loud. They don't like the
12 microphone in their hand. It makes them nervous. But I
13 threaten them if they don't talk loud enough, I'm going to give
14 them the microphone, and that typically works. And oftentimes
15 I will have the people in the back stand up if they are quiet,
16 just again so we can all hear them.

10:55:04

17 MR. STUMP: Yes, sir.

18 THE COURT: Any questions about voir dire?

10:55:17

19 MS. SOLOMON: No. Just that each side will have a
20 half-hour after you conduct the --

10:55:33

21 THE COURT: Yes, up to a half-hour. You probably
22 won't need it, but you're welcome to. I'm not going to put a
23 stop watch on you. If you get to 31 minutes, I'm not going to
24 throw the hook out. But I have found putting reasonable limits
25 on attorneys' time let's me continue to have attorneys to ask

1 questions as opposed to saying no questions by the lawyers.

2 Any questions at all about the trial practice,
3 procedure, or anything like that?

10:56:03

4 Gladys, you can see that the questionnaire is filled
5 out, you can have the jury commissioner take care of that for
6 us?

7 THE CLERK: I'll talk to the courtroom deputy and let
8 them know.

9 THE COURT: Okay.

10:56:12

10 Any anticipated evidentiary issues I need to know in
11 advance?

10:56:33

12 MR. STUMP: I don't think so, Judge. I don't. The
13 404(b) obviously we'll handle ahead of time. We'll get
14 together on motions in limine before they are filed and see if
15 we can resolve some of those. I really think -- I've already
16 provided a full complete copy of my exhibits to Miss Solomon,
17 so she has them, so she knows what I'm going to try to
18 introduce. I don't think there's anything major that's going
19 to come up.

10:56:50

20 THE COURT: Okay. If in advance you can tell me that
21 there are no objections to certain exhibits, that's fine. I
22 understand in this case there might be an objection to every
23 exhibit, and I understand that too.

24 MR. STUMP: Your Honor, can I ask you a question?

10:57:21

25 THE COURT: Sure.

1 MR. STUMP: I have -- these 20 witnesses all have
2 different schedules and stuff. I've got a witness who is
3 flying in from Thailand. I've got a witness who is moving to
4 Jamaica the week before trial. It's all the typical stuff.
10:57:36 5 But one thing that sometimes happens is a witness says I can go
6 on Tuesday, but after that, you know, I'm unavailable, so
7 you've got to get me in Tuesday.

8 If we get in a situation where we have got a witness
9 on the stand and that testimony goes on longer than anybody
10:57:53 10 anticipated and I'm in that bind, would Your Honor consider the
11 possibility of pausing a witness' testimony to allow another
12 witness to jump in?

13 THE COURT: Sure. For both sides I do that. I
14 understand. And, again, that's one of the reasons why I'm
10:58:08 15 liberal on beyond the scope so that everything can be brought
16 in front of the jury with that witness in the first and only
17 time they testify.

18 MR. STUMP: Thank you.

19 THE COURT: Sure. That's no problem.

10:58:22 20 Anything else at all about the final pretrial you want
21 to talk about? If not, I'll come down, and we'll do jury
22 instructions at the defense table so we can pass things back
23 and forth. Anything else, Miss Solomon?

24 MS. SOLOMON: No, Your Honor.

10:58:37 25 THE COURT: Mr. Stump?

1 MR. STUMP: No, thank you, Your Honor.

2 THE COURT: Miss Phillips, I'm going to give you a
3 fair trial. Don't make it tough on me.

10:58:53

4 Okay. Let's go down to the defense table, and we'll
5 pass stuff around.

6 MS. SOLOMON: Speaking of the marshal, in the order
7 there is the provision that it can be removed after six months.

8 THE COURT: Yes.

11:00:55

9 MS. SOLOMON: I am going to file a motion with the
10 Chief Judge asking that that provision be removed.

11 THE COURT: Yes, because --

12 MS. SOLOMON: There are no problems in this case since
13 I've been involved.

11:01:02

14 THE COURT: A useful amount of time, five minutes
15 before and 15 minutes after is, yes, do that.

16 MS. SOLOMON: So I will be filing that.

17 THE COURT: And if you want to add to it that the
18 trial judge supports that.

19 MS. SOLOMON: Okay.

11:01:13

20 THE COURT: If nothing else, that they at least expand
21 the time so that you have time to meet with her.

22 THE DEFENDANT: Or how about it being just simply
23 removed?

24 THE COURT: That's my first choice.

11:01:25

25 THE DEFENDANT: Yeah.

1 THE COURT: Okay.

2 MS. SOLOMON: This is just voir dire concerns
3 (tendering).

4 THE COURT: Okay.

11:02:43

5 (Pause.)

6 THE COURT: Okay. This is the jury instruction
7 conference in United States of America versus Cherron Marie
8 Phillips, case 12 CR 7872. Both counsel are present as well
9 as Miss Phillips.

11:14:10

10 The first instruction for consideration is
11 government's No. 1.

12 When I refer to pattern instructions during this
13 conference, I mean the Pattern Federal Jury Instructions
14 Criminal 2012 Seventh Circuit version.

11:14:24

15 Is there any objection to this instruction on behalf
16 of the defendant?

17 MS. SOLOMON: None, Your Honor.

18 THE COURT: Given, no objection.

19 When I rule on these, I will write on the marked copy,
20 marked meaning the one that has the citation and the GN/O
21 means given, no objection.

11:14:36

22 THE COURT: Instruction 2 for the government is 1.02
23 pattern instruction. Any objection to this instruction?

24 MS. SOLOMON: No objection.

11:14:52

25 THE COURT: 2 is given, no objection.

MICHAEL P. SNYDER, Official Court reporter

1 Government's 3 is pattern instruction 1.03,
2 presumption of innocence burden of proof instruction. Any
3 objection?

4 MS. SOLOMON: No objection.

11:15:08

5 THE COURT: Without objection.

6 Government's 4 is pattern instruction 2.01 regarding
7 the evidence. Any objection?

8 MS. SOLOMON: No objection.

11:15:34

9 MR. STUMP: I think it's modified. As I recall, it
10 was just some verbiage we didn't need in our case.

11 THE COURT: If I take judicial notice or something, we
12 can add that, but I'll give it in this form. So 4 given
13 without objection.

11:15:54

14 All right. Government's 5 is pattern instruction 2.02
15 concerning the evidence. Any objection?

16 MS. SOLOMON: I'm sorry. No objection.

17 THE COURT: Given without objection.

18 Government 6 is 2.03 from the pattern, definition of
19 direct and circumstantial evidence.

11:16:13

20 MS. SOLOMON: No objection.

21 THE COURT: Given without objection.

22 Government's 7. I'm going to reserve ruling on this.
23 If she does testify.

11:16:29

24 MS. SOLOMON: Okay. I also had an objection on that
25 one. Oh, actually no, I don't have an objection on that one.

MICHAEL P. SNYDER, Official Court reporter

1 I had a proposed jury instruction No. 7 which is the Seventh
2 Circuit pattern jury instruction No. 2.04, which was regarding
3 the number of witnesses, because I am not sure whether we will
4 have any witnesses, or I anticipate that the government will
5 have more. So I wanted an instruction on the number of
6 witnesses.

7 THE COURT: Okay. I will get to yours at the end.

8 MS. SOLOMON: Okay.

9 THE COURT: So on government 7?

10 MS. SOLOMON: No objection.

11 THE COURT: Okay. I'm going to put reserve ruling,
12 but no objection if defendant fails to testify.

13 Okay. 8 I'm going to reserve ruling on because this
14 is dependent on whether she testifies or not. If she does not
15 testify, do you have any objection to the current form?

16 MS. SOLOMON: No, I do not.

17 THE COURT: Okay. So I'll reserve ruling, no
18 objection if defendant does not testify. If she does, we'll
19 add the bracketed material.

20 Now, instruction 9, attorney's right to interview
21 witnesses.

22 MS. SOLOMON: No objection.

23 THE COURT: Given without objection.

24 3.09, government's 10, statement by the defendant.

25 MS. SOLOMON: No objection.

1 THE COURT: Okay. Given, no objection.

2 Government's 11 is 3.11.

3 MS. SOLOMON: I object.

4 THE COURT: I reserve ruling on this. This is 404(b)?

11:19:04 5 MS. SOLOMON: Yes.

6 THE COURT: So I'll reserve ruling pending 404 ruling.

7 Government's 12 is 3.13, opinion testimony. This is
8 the fingerprint expert.

9 MR. STUMP: No objection.

11:19:23 10 THE COURT: Given, no objection.

11 3.18 is juror notetaking. Any objection?

12 MS. SOLOMON: No objection.

13 THE COURT: Given, no objection.

14 MR. STUMP: There's a notation I made on proposed

11:19:43 15 instruction No. 14. As I was reading through it, I just
16 realized it might read better and clearer if the second element
17 was moved down before the fifth element.

18 MS. SOLOMON: I have an objection.

19 THE COURT: Yes, okay.

11:19:55 20 MS. SOLOMON: And I have an alternate instruction.

21 THE COURT: Let's compare the two then. Which is your
22 alternate?

23 MS. SOLOMON: It's jury instruction No. 14, so it's
24 the third page.

11:20:07 25 THE COURT: Okay.

MICHAEL P. SNYDER, Official Court reporter

1 MS. SOLOMON: This was an instruction that was given
2 in the Williamson case in the Tenth Circuit.

3 THE COURT: Okay. Let's go off the record so we don't
4 encumber it right now.

11:20:21 5 (Discussion off the record.)

6 THE COURT: Defendant's 14 is refused, and the reason
7 I'm refusing it is because the government's instruction tracks
8 the language of the statute more closely in terms of describing
9 the officer or employee whereas the defendant's just talks
10 about an employee. And the government's also tracks the
11 statute in using the words fictitious, materially false, or
12 fraudulent, and the defendant's doesn't. And the government's
13 also talks about on account of, whereas the defendant's uses
14 the word "because of," and the statute uses on account of. So
11:30:08 15 I'm going to refuse the defendant's instruction.

16 Do you have anything you want to add regarding my
17 refusal on defendant's?

18 MR. STUMP: No, sir.

19 THE COURT: Let's go off the record then.

11:30:18 20 (Discussion off the record.)

21 THE COURT: So government's 14 will be given over
22 objection of the defendant, but it does need edits, and we've
23 talked about what the edits are.

24 Would you want to articulate your objections to the
11:30:40 25 instruction for the record, please, Miss Solomon.

MICHAEL P. SNYDER, Official Court reporter

1 MS. SOLOMON: I would object to the addition of the
2 words "or attempted to be filed" in light of the ambiguity that
3 that inserts in the trial and that jury confusion it might
4 cause with regard to additional liens or encumbrances that the
5 jury might believe were also attempted to be filed but were not
6 successfully.

7 THE COURT: Your response?

8 MR. STUMP: Your Honor, the indictment charges both
9 the completed crime and attempt. We believe that the evidence
10 will show that the crime was completed, but we would like to be
11 able to argue for the jury in the alternative that the crime
12 has been attempted. So we ask that the language about attempt
13 stay in the instruction.

14 THE COURT: Okay. And if there's a change in the
15 course of the testimony, I'm happy to reconsider the
16 instruction. It is my intention, however, to read instructions
17 at the beginning. My experience has been the jury really likes
18 to know what the law is. But if I have to make a change of
19 horse midstream, I'm not adverse to doing that. I will just
20 explain to them "Originally I told you the word attempt was in
21 this instruction; it no longer is." So I'm happy to revisit
22 that.

23 Okay, government's 15 is a definition of lien or
24 encumbrance.

25 MS. SOLOMON: I have an objection to that.

MICHAEL P. SNYDER, Official Court reporter

1 THE COURT: I'm sorry?

2 MS. SOLOMON: I objected to theirs, and I have a
3 proposed No. 15.

4 THE COURT: Okay, let's go off the record again.

11:32:14 5 (Discussion off the record.)

6 THE COURT: On government's 15, in contrast to the
7 defendant's 15, which is a definition of lien or encumbrance, I
8 am going to take that under advisement and reserve ruling.
9 I'll do independent research.

11:33:11 10 Government's 16 is definition of materiality.

11 MS. SOLOMON: No objection.

12 THE COURT: Given, no objection.

13 Government's 17 is pattern instruction 4.05, the date
14 of the crime charged.

11:33:30 15 MS. SOLOMON: No objection.

16 THE COURT: Given, no objection.

17 Government's 18 is pattern instruction 4.06, separate
18 consideration to each charge.

19 MS. SOLOMON: No objection.

11:33:45 20 THE COURT: Given, no objection.

21 Government's 19 is punishment, that the jury should
22 not consider that in rendering a verdict.

23 MS. SOLOMON: No objection.

24 THE COURT: Given, no objection.

11:33:58 25 Government's 20, definition of attempt.

MICHAEL P. SNYDER, Official Court reporter

1 MS. SOLOMON: I did have an objection to that as well.

2 THE COURT: Okay.

3 MS. SOLOMON: In addition to the overall definition, I
4 also had a proposed alternate instruction.

11:34:27 5 THE COURT: Which one is your alternate number?

6 MS. SOLOMON: It's also No. 20.

7 THE COURT: Let's go off the record.

8 (Discussion off the record.)

9 THE COURT: So I'm going to give defendant's 20,
11:36:34 10 given, no objection, needs edits.

11 MS. SOLOMON: Okay.

12 THE COURT: And the edit will be the word "crime"
13 changed to "offense." When I say "needs edits," those who have
14 done these needs to edit them.

11:36:46 15 Then do you want to show your 20 is withdrawn?

16 MR. STUMP: Yes, Your Honor. That's fine.

17 THE COURT: Okay. Government's 21, definition of
18 knowingly.

19 MS. SOLOMON: I have an objection.

11:37:07 20 THE COURT: Okay.

21 MS. SOLOMON: There is a typo. It should be "she."

22 THE COURT: Off the record.

23 (Discussion off the record.)

24 THE COURT: I'm going to refuse government's 21
11:42:39 25 because it doesn't include the last paragraph of 4.10, and I'm

1 going to use defendant's 21 because it does not include that
2 ignorance of the law is not a defense, and I think in this
3 particular case it's important. So I'm going to ask Miss
4 Solomon if you would do a Court's 1, because you're both going
5 to object to what I'm doing.

11:42:58

6 MS. SOLOMON: Okay.

7 THE COURT: Court's 1, and if you would take your
8 current 21 and add the government's ignorance of the law
9 statement.

11:43:07

10 MS. SOLOMON: Okay.

11 MR. STUMP: And let me just state for the record, I
12 actually will not register an objection to that second
13 paragraph that was referred to as an ostrich instruction in the
14 defense's proposed instruction.

11:43:21

15 THE COURT: Let's go back. You don't do it, then why
16 don't you do it. We'll call it your 21.

17 MR. STUMP: That's fine.

18 THE COURT: And I'll give it over objection.

19 MS. SOLOMON: Okay.

11:43:30

20 THE COURT: Then I will give it over objection of the
21 defendant.

22 Then I'm going to show as refused defendant's 21.

23 MS. SOLOMON: And then there's just one other, and I
24 ask leave to submit a defendant's theory of the case
25 instruction.

11:44:18

1 THE COURT: What will you call it? I don't know that
2 I've seen one that says "Theory of the case."

11:44:33

3 MS. SOLOMON: Well, the defendant's statement of what
4 her defense is. And I have not had a conversation with Miss
5 Phillips with regard to that.

6 THE COURT: Okay. I've never seen an instruction like
7 that in all my years.

8 MS. SOLOMON: You haven't?

11:44:41

9 THE COURT: I'm not saying -- I learn something every
10 day. I'm not saying I'm not going to do it. I'm just saying
11 I've never seen one. Would we put it back at the end of
12 government's 2? No. Well, go ahead and do it, and I'm happy
13 to look at it.

14 MS. SOLOMON: Okay.

11:45:17

15 THE COURT: Have you seen a theory?

16 MR. STUMP: I've only seen that in civil cases where
17 usually the plaintiff's side gets to have some instruction
18 about what their theory of the case is and the defense, you
19 just say what their theory of the case is or it's a general
20 statement that they disagree with the plaintiff's theory of the
21 case.

11:45:32

22 THE COURT: I'll look at it.

23 MR. STUMP: I've never had it in a criminal case.

11:45:50

24 THE COURT: Okay. Government's 22, joint venture,
25 pattern instruction 5.05.

1 MS. SOLOMON: I have no objection.

2 THE COURT: I'm sorry?

3 MS. SOLOMON: No objection.

4 THE COURT: Given, no objection, government's 22.

11:46:10

5 Government's 23, pattern instruction 5.06, acting
6 through another.

7 MS. SOLOMON: I have no objection.

8 THE COURT: Given, no objection.

9 Instruction 7.01, government's No. 24.

11:46:25

10 MS. SOLOMON: No objection.

11 THE COURT: That's given, no objection.

12 Okay. Then 26, government's 26, pattern 7.03, the
13 Silvern instruction.

14 MR. STUMP: Before that we had a 25.

11:46:44

15 THE COURT: 25, the verdict form.

16 MS. SOLOMON: No objection.

17 THE COURT: Okay. 7.02, government's 25, no
18 objection.

19 Okay. 26 for the government is the Silvern
20 instruction. The law on this is if I don't give it with the
21 original instructions and it looks like the jury is deadlocked,
22 I can't give it later. So I have to give it as part of this
23 packet; otherwise it's coercive.

11:46:58

24 MS. SOLOMON: Okay. I'm going to object.

11:47:23

25 THE COURT: Okay. And the basis?

1 MS. SOLOMON: Just a minute.

2 THE COURT: Let me see the comments.

3 MS. SOLOMON: Yes.

4 Do you want to see the comments? (Tendering.)

11:47:50 5 MS. SOLOMON: I guess I would just ask what's your
6 position on giving it at the end. Do you have a policy or --

7 THE COURT: Well, here's how I handle it. Let's say
8 the jury is out for six hours, eight hours, some point in time
9 where we think they might be hung, okay? I would bring them in
11:49:00 10 and ask the foreman to identify themselves and ask if the
11 foreman believes further deliberation would be of assistance or
12 do you think you are hopelessly deadlocked. Go back, talk, and
13 come back with an answer.

14 If they come back and say they are hopelessly
11:49:16 15 deadlocked, then I might give them this instruction again at
16 that time. If I haven't given them this instruction as part of
17 the original packet, I can't give it to them in isolation for
18 the first time at that point.

19 MS. SOLOMON: Okay. I'd have no objection.

11:49:31 20 THE COURT: Given, no objection.

21 Let's look at defendant's instructions then.

22 Defendant's instruction 7 is pattern instruction 2.04,
23 the number of witnesses.

24 MR. STUMP: No objection.

11:49:49 25 THE COURT: Given, no objection.

1 The only one we've got some edits, and then we've got
2 your statement of the theory of the case.

3 Are there any other instructions for the Court's
4 consideration?

11:50:30 5 MR. STUMP: No, sir.

6 MS. SOLOMON: No, Judge.

7 THE COURT: Anything else for the jury instruction
8 conference?

9 MR. STUMP: No, your Honor.

11:50:36 10 MS. SOLOMON: No.

11 THE COURT: Let's go back off the record.

12 (Discussion off the record.)

13 THE COURT: That's it. Okay.

14 (Proceedings concluded.)

15 C E R T I F I C A T E

16 I, Michael P. Snyder, do hereby certify that the
17 foregoing is a complete, true, and accurate transcript of the
18 proceedings had in the above-entitled case before the Honorable
19 MICHAEL REAGAN, one of the judges of said Court, at Chicago,
20 Illinois, on May 21, 2014.

21

22 /s/ Michael P. Snyder
23 Official Court Reporter
24 United States District Court
25 Northern District of Illinois
 Eastern Division

MICHAEL P. SNYDER, Official Court reporter